

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
COLORADO RIVER BASIN REGION**

CEASE AND DESIST ORDER NO. R7-2009-0007  
ISSUED TO  
NILAND SANITARY DISTRICT, OWNER/OPERATOR  
MUNICIPAL WASTEWATER TREATMENT PLANT  
Niland, Imperial County

The California Regional Water Quality Control Board, Colorado River Basin Region, (hereinafter referred to as the Regional Board) finds that:

1. Niland Sanitary District (hereinafter, the Discharger) owns and operates a wastewater collection, treatment and disposal system and provides sewerage service to the City of Niland. The wastewater treatment plant (WWTP) has a treatment capacity of 0.50 million gallons-per-day (MGD).
2. The Discharger's wastewater treatment plant (WWTP) is a publicly owned treatment works (POTW). The treatment system consists of a manual bar screen, three lined partial mix aerated stabilization ponds connected in series, and a chlorination/dechlorination system.
3. Effluent from the WWTP is discharged to Imperial Irrigation District's "R" Drain located in the SW ¼ of Section 9, T11S, R14E, SBB&M. The "R" Drain, which is tributary to the Salton Sea Watershed, flows four miles and then discharges to the Salton Sea. The "R" Drain and Salton Sea are waters of the United States.
4. The Water Quality Control Plan (Basin Plan) for the Colorado River Basin, as amended to date, designates the beneficial uses of ground and surface waters in the Region. The designated beneficial uses of waters in the Imperial Drains are:
  - a. Fresh Water Replenishment of Salton Sea (FRSH)
  - b. Water Contact Recreation (REC I)<sup>1,2</sup>
  - c. Non-Contact Water Recreation (REC II)<sup>1</sup>
  - d. Warm Water Habitat (WARM)
  - e. Wildlife Habitat (WILD)
  - f. Preservation of Rare, Threatened or Endangered Species (RARE)<sup>3</sup>
5. On February 14, 2003, the Regional Water Board adopted Waste Discharge Requirements (WDRs) Order No. R7-2003-0049 (NPDES Permit No. CA0104451) for the Discharger's WWTP. WDRs Order No. R7-2003-0049 specifies effluent limitations, prohibitions, specifications, and provisions necessary to protect the beneficial uses of the surface and ground waters within the Colorado River Basin Region. WDRs Order No. R7-2003-0049 became effective on February 14, 2003 and expired on November 19, 2008.

<sup>1</sup> Unauthorized use.

<sup>2</sup> The only Rec 1 usage that is known to occur is from infrequent fishing.

<sup>3</sup> Rare, endangered, or threatened wildlife exists in or utilizes some of these waterway(s). If the RARE beneficial use may be affected by a water quality control decision, responsibility for substantiation of the existence of rare, endangered, or threatened species on a case-by-case basis is upon the California Department of Fish and Game on its own initiative and/or at the request of the Regional Board; and such substantiation must be provided within a reasonable time frame as approved by the Regional Board.

6. WDRs Board Order No. R7-2003-0049 includes the following effluent discharge limitations:
  - a. Effluent Limitation A.2:  
 “The 30-day average percent removal of pollutant parameter BOD<sub>5</sub> and suspended solids shall not be less than 65 percent.”
  - b. Effluent Limitation A.4:  
 “Wastewater effluent discharged to ‘R’ Drain shall not have an Escherichia coli (E. coli) concentration in excess of a log mean of Most Probable Number (MPN) of 126 MPN per 100 milliliters nor shall any sample exceed 400 MPN per 100 milliliters.”
  - c. Effluent Limitation A.8 :  
 “Wastewater discharged to ‘R’ Drain shall not exceed these effluent limits. These limits are calculated based on monitoring results and using the California Toxic Rule and the Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays and Estuaries of California for water quality based effluent limit:”

Constituents	Unit	Date Effluent Limit Becomes Effective	Average Monthly Effluent Limit	Maximum Daily Effluent Limit <sup>1</sup>
Copper (interim)	µg/L	July 5, 2003	29.0	29.0
Copper (final)	µg/L	June 25, 2008	2.39	4.80

<sup>1</sup> Compliance with the Average Monthly Effluent Limit and Maximum Daily Effluent Limit shall be determined as described in Section 2.4.5 Compliance Determination (Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California)

7. On August 2, 2007, the Regional Board sent a Notice of Noncompliance letter to the Discharger, affirming the violation of the Monitoring and Reporting Requirements set forth in Board Order No. R7-2003-0049. The Notice of Noncompliance stated the following:
 

“In addition, the Monitoring and Reporting Program of Board Order No. R7-2003-0049 requires the effluent discharging at the “R” Drain be monitored semi-annually for acute and chronic toxicity and quarterly for copper, selenium and thallium upstream the discharge point. Your June semi-annual and quarterly 2007 report does not provide monitoring results for these constituents.” The reports were received late on August 15, 2007.
8. On November 19, 2008, the Regional Board adopted WDRs Order No. R7-2008-0020 (NPDES Permit No. CA0104451), which rescinded WDRs Order No. R7-2003-0049. WDRs Order No. R7-2008-0020 specifies effluent limitations, prohibitions, specifications, and provisions necessary to protect the beneficial uses of the surface and ground waters within the Colorado River Basin Region. WDRs Order No. R7-2008-0020 became effective on November 19, 2008 and will expire on November 19, 2013.
9. WDRs Order No. R7-2008-0020 includes, in part, the following effluent discharge limitations for copper:

“Final Effluent Limitations IV.A.1.a – Discharge Point 001:

The Discharger Shall maintain compliance with the following effluent limitations at Discharge Point 001, with compliance measured at Monitoring Location EFF-001 as described in the attached Monitoring and Reporting Program (MRP) (Attachment E):”

Parameter	Unit	Effluent Limitations	
		Average Monthly	Maximum Daily
Copper, Total Recoverable	µg/L	19	52
	lbs/day <sup>1</sup>	0.077	0.22

<sup>1</sup>The mass-based effluent limitations are based on a design capacity of 0.50 MGD.

10. Monitoring reports submitted by the Discharger was in chronic violation of Board Order No. R7-2003-0049, because the discharge from its WWTP violate the effluent limitations for copper, BOD, and E. Coli, cited in Finding No. 6, above.
11. The reporting violations cited in Finding No. 7 above is not subject to a MMP and will therefore not be included in Attachment “A”; however, the Regional Board maintains discretionary enforcement authority under CWC 13385(c) and the maximum liability available for the incomplete reporting violation is \$10,000.
12. A summary of each chronic violation of Board Order No. R7-2003-0049 is contained in Attachment “A”, which is made a part of this CDO by reference.
13. Section 13301 of the CWC states in relevant parts:
 

“When a regional board finds that a discharge of waste is taking place, or threatening to take place, in violation of requirements or discharge prohibitions prescribed by the regional board or the state board, the board may issue an order to cease and desist and direct that those persons not complying with the requirements or discharge prohibitions (a) comply forthwith, (b) comply in accordance with a time schedule set by the board, or (c) in the event of a threatened violation, take appropriate remedial or preventive action.”

“In the event of an existing or threatened violation of waste discharge requirements in the operation of a community sewer system, cease and desist orders may restrict or prohibit the volume, type, or concentration of waste that might be added to that system by dischargers who did not discharge into the system prior to the issuance of the cease and desist order.”
14. CWC Section 13385(h) and (i) require the Regional Board to impose mandatory minimum penalties upon dischargers that violate certain effluent limitations. CWC Section 13385(j) exempts certain violations from the mandatory minimum penalties. CWC Section 13385(j)(3) exempts the discharge from mandatory minimum penalties “where the waste discharge is in compliance with either a cease and desist order issued pursuant to Section 13301 or a time schedule order issued pursuant to Section 13300, if all the [specified] requirements are met.”
15. Compliance with this Order exempts the Discharger from mandatory minimum penalties for violations of effluent limitations in accordance with CWC Section 13385(j)(3) from the date of this Order’s adoption by the Regional Board.

16. Specifically, pursuant to CWC 13385(j)(3)(B)(i), mandatory minimum penalties under 13385 (h) and (i) will not apply if the Discharger is not able to consistently comply with the effluent limitations for copper established in the WDRs because:
  - a. These effluent limitations are new;
    - i. The effluent limitations for copper were new parameters established in WDRs Order R7-2008-0020, which rescinded WDRs Order No. R7-2003-0049 on November 19, 2008.
  - b. These effluent limitations have become effective after the effective date of the WDRs and after July 1, 2000;
  - c. New or modified control measures are necessary in order to comply with the effluent limitations; and the new or modified control measures cannot be designed, installed, and put into operation within 30 calendar days.
  - d. The new or modified control measures cannot be designed, installed, and put into operation within 30 calendar days.
17. CWC Section 13385(j)(3) requires the Discharger to prepare and implement a Pollution Prevention Plan pursuant to Section 13263.3 of the CWC. Therefore, a Pollution Prevention Plan will be necessary for copper in order to effectively reduce the effluent concentrations by source control measures.
18. CWC Section 13263.3(d)(1) states in relevant part:

“The state board, a regional board, or a POTW may require a discharger subject to its jurisdiction to complete and implement a pollution prevention plan if any of the following apply:

(D) The discharger is subject to a cease and desist order issued pursuant to Section 13301...”
19. Issuance of this CDO to enforce CWC Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 21000 et seq.), in accordance with Section 15321 (“Enforcement Actions by Regulatory Agencies”), Title 14, California Code of Regulations (CCRs).
20. Any person aggrieved by this action of the Regional Water Board may petition the State Water Board to review the action in accordance with CWC Section 13320 and CCRs, Title 23, Sections 2050 and following. The State Water Board must receive the petition no later than 5:00 p.m., thirty (30) days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: [http://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality](http://www.waterboards.ca.gov/public_notices/petitions/water_quality). Copies will also be provided upon request.

**IT IS HEREBY ORDERED**, that in order to meet the provisions contained in Division 7 of the CWC and regulations adopted there under, the Discharger shall comply with the following:

1. The Discharger is required to prepare and implement a Pollution Prevention Plan pursuant to Section 13263.3 of the CWC. The Discharger must address all of the issues specified in Section 13263.3(d)(3)(A) through (I) and shall take specific actions as indicated in the following time schedule to achieve compliance with all requirements of Board Order No. R7-2008-0020.

<b>Milestone</b>	<b>Milestone Description</b>	<b>Milestone Submittal</b>	<b>Completion Date</b>
1	Complete Final Design of Wastewater Treatment Plant Improvements	Submit a technical report consisting of a copy of the Final Design Drawings to the Regional Board	December 31, 2009
2	Complete Pollution Prevention Plan	Submit technical report consisting of a copy of the Pollution Prevention Plan to the Regional Board	December 31, 2009
3	Complete Construction of the Wastewater Treatment Plant Improvements	Submit a technical report consisting of a Summary and Verification of Construction Completion	September 30, 2010
4	Achieve full compliance with order No. 2008-0020 (NPDES Permit No. CA0104451)	Submit written certification that WWTP is in compliance with Order No. R7-2008-0020 (NPDES Permit No. CA0104451)	December 31, 2010

2. The Discharger shall submit quarterly reports, due by the 15<sup>th</sup> of January, April, July, and October of each year, on the status of the preparation and implementation of the Pollution Prevention Plan and associated Milestones listed in the Table of Item No. 1, above.
3. Wastewater discharged to the "R" Drain shall not exceed the following interim effluent limit for copper<sup>1</sup>:

<b><u>Constituent</u></b>	<b><u>Unit</u></b>	<b><u>Average Monthly Effluent Limit</u></b>	<b><u>Daily Maximum Effluent Limit</u></b>
Copper, Total Recoverable	µg/L	100	100
	lbs/day	0.0052	0.0052

<sup>1</sup> The interim effluent limit is based on plant performance data, reference data from representative wastewater treatment facilities, and Best Professional Judgment (BPJ).

4. As an alternative option to achieve compliance with all requirements of Board Order No. R7-2008-0020, the Discharger shall submit a report in the form of an engineering report describing alternative methods of treatment and disposal to phase out the discharge to waters of the United States. The report shall be submitted to the Regional Board by June 30, 2009. In addition to the requirements stated in Section 13263.3(d)(3), the report shall also include:

- a) A description of potential alternative methods of treatment and disposal,
  - b) A description of the environmental benefits of the chosen alternative method of treatment and disposal compared to the WWTP's current method,
  - c) A description of the plan to implement the chosen alternative method of treatment and disposal, and
  - d) A time schedule setting deadlines or milestones for each phase of implementation of the chosen alternative method of treatment and disposal to phase out the discharge to surface waters of the United States by December 31, 2010.
5. After the engineering report is submitted to the Regional Board by June 30, 2009, the Discharger shall submit quarterly reports, due by the 15<sup>th</sup> of January, April, July, and October of each year, on the status and progress of the preparation and implementation of the chosen alternative of treatment and disposal described above in paragraph 4.
  6. Plans and schedules are subject to the prior approval of the Executive Officer. Failure to comply with the terms of this Order may result in administrative civil liability of up to \$10,000 per day for each violation pursuant to Sections 13263.3(g), 13385(c)(1), and/or 13308 of the CWC.
  7. In accordance with California Business and Professions Code sections 6735, 7835, and 7835.1, engineering and geologic evaluations and judgments shall be performed by or under the direction of California registered professionals (i.e., civil engineer, engineering geologist, geologist, etc.) competent and proficient in the fields pertinent to the required activities. All technical reports specified herein that contain work plans, that describe the conduct of investigations and studies, or that contain technical conclusions and recommendations concerning engineering and geology shall be prepared by or under the direction of appropriately qualified professional(s), even if not explicitly stated. Each technical report submitted by the Discharger shall contain a statement of qualifications of the responsible licensed professional(s) as well as the professional's signature and/or stamp of the seal.
  8. In addition, if in the opinion of the Regional Board's Executive Officer, the Discharger fails to comply with this Order, the Executive Officer may issue a Complaint against the Discharger under Article 2.5, Chapter 5, Division 7 of the CWC, and seek the appropriate administrative civil liability and/or request the Attorney General to take appropriate action against the Discharger, including injunctive relief and civil monetary liability as deemed appropriate.

I, Robert Perdue, Executive Officer, do hereby certify that the foregoing is a full, true and correct copy of an Order adopted by the Regional Water Quality Control Board, Colorado River Basin Region, on January 22, 2009.

  
ROBERT PERDUE, Executive Officer

**ATTACHMENT "A"**

Summary of Violations of Board Order No. R7-2003-0049 and Mandatory Minimum Penalties

<b>Assessed Violation<sup>1</sup> No.</b>	<b>Description of Violation</b>	<b>Date Occurred</b>	<b>Serious Violation Defined by CWC 13385(h)</b>	<b>Amount Assessed Dollars (\$)</b>
369401	Exceeded 30-day geometric mean limit of 126 MPN/100mL for E. coli Reported value = 170 MPN/100mL	3/31/2006	N	Assessed in ACLO-R7-2006-0074
423190	Exceeded Daily Maximum Effluent Limit of 29 µg/L for Copper Reported value = 35 µg/L	5/1/2006	Y	3,000
423192	Exceeded Average Monthly Effluent Limit of 29 µg/L for Copper Reported value = 35 µg/L	5/31/2006	Y	3,000
493724	Did not meet 30-Day average percent removal for BOD <sub>5</sub> . Minimum removal value = 65% Reported value = 58%	7/31/2006	N	3,000
493727	Exceeded monthly average limit of 400 MPN/100mL for E. coli Reported value = 800 MPN/100mL	8/14/2006	N	3,000
493728	Exceeded monthly average limit of 400 MPN/100mL for E. coli Reported value = 500 MPN/100mL	8/28/2006	N	3,000
446520	Exceeded monthly average limit of 400 MPN/100mL for E. coli Reported value = 500 MPN/100mL	9/5/2006	N	3,000
651531	Did not meet 30-Day average percent removal for BOD <sub>5</sub> . Minimum removal value = 65% Reported value = 59%	6/30/2007	N	0 <sup>2</sup>
657737	Did not meet 30-Day average percent removal for BOD <sub>5</sub> . Minimum removal value = 65% Reported value = 61.5%	7/31/2007	N	0 <sup>2</sup>
760283	Exceeded Daily Maximum Effluent Limit of 29 µg/L for Copper Reported value = 32 µg/L	8/6/2007	N	0 <sup>2</sup>
760286	Exceeded Average Monthly Effluent Limit of 29 µg/L for Copper Reported value = 32 µg/L	8/31/2007	N	3,000
749243	Exceeded monthly average limit of 400 MPN/100mL for E. coli Reported value = 1600 MPN/100mL	12/10/2007	N	3,000
749259	Exceeded Daily Maximum Effluent Limit of 29 µg/L for Copper Reported value = 36 µg/L	12/10/2007	Y	3,000
749254	Exceeded monthly average limit of 400 MPN/100mL for E. coli Reported value = 1600 MPN/100mL	12/17/2007	N	3,000

<sup>1</sup> Data Source: California Integrated Water Quality System (CIWQS)

<sup>2</sup> This is a supporting violation.

<b>Assessed Violation<sup>1</sup> No.</b>	<b>Description of Violation</b>	<b>Date Occurred</b>	<b>Serious Violation Defined by CWC 13385(h)</b>	<b>Amount Assessed Dollars (\$)</b>
749256	Exceeded monthly average limit of 400 MPN/100mL for E. coli Reported value = 500 MPN/100mL	12/28/2007	N	3,000
749260	Exceeded Average Monthly Effluent Limit of 29 µg/L for Copper Reported value = 36 µg/L	12/31/2007	Y	3,000
759628	Exceeded monthly average limit of 400 MPN/100mL for E. coli Reported value = 1600 MPN/100mL	1/7/2008	N	3,000
759657	Exceeded Daily Maximum Effluent Limit of 29 µg/L for Copper Reported value = 49 µg/L	3/3/2008	Y	3,000
759682	Exceeded Average Monthly Effluent Limit of 29 µg/L for Copper Reported value = 49 µg/L	3/31/2008	Y	3,000
766281	Exceeded Daily Maximum Effluent Limit of 29 µg/L for Copper Reported value = 49 µg/L	5/5/2008	Y	3,000
766282	Exceeded Average Monthly Effluent Limit of 29 µg/L for Copper Reported value = 49 µg/L	5/31/2008	Y	3,000
780275	Exceeded Daily Maximum Effluent Limit of 29 µg/L for Copper Reported value = 75 µg/L	7/2/2008	Y	3,000
780276	Exceeded Average Monthly Effluent Limit of 29 µg/L for Copper Reported value = 75 µg/L	7/31/2008	Y	3,000

<sup>1</sup> Data Source: California Integrated Water Quality System (CIWQS)